

MUNICIPALITY of GERMANTOWN

TITLE NINE – Taxation
Chap. 181. Income Tax
Chap. 183. Motor Vehicle License Tax

CHAPTER 181
Income Tax

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181.01 PURPOSE

To provide funds for the purposes of general Municipal operations, maintenance, new equipment, extension and enlargement of Municipal services and facilities of the Municipality of Germantown there shall be, and is hereby levied, a tax on income salaries, wages, commissions and other compensation and on net profits as hereinafter provided in Ordinance 1072, passed 3-1-71, and as subsequently amended from time to time.

181.02 DEFINITIONS

As used in this chapter, the following words shall have the meaning ascribed to them in this section, except as and if the context clearly indicates or requires a different meaning. The singular shall include the plural, and the masculine shall include the feminine and the neuter.

- (1) "Association" means a partnership, limited partnership, limited liability company, Chapter S Corporation as defined in the Federal tax code, 26 U.S.C. 1361, or any other form of unincorporated enterprise, owned by two or more persons.

- (2) "Board of Tax Appeals" means the Board created by and constituted as provided in Section 181.13.
- (3) "Business" means an enterprise, profession, undertaking or other activity of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, partnership, association, corporation or any other entity.
- (4) "Corporation" means a corporation or joint stock association organized under the laws of the United States, the State of Ohio or any other state, territory or foreign country or dependency, but not including Chapter S Corporations.
- (5) "Domicile" means the permanent legal residence of a taxpayer. A taxpayer may have more than one residence but not more than one domicile.
- (6) "Employee" means one who works for wages, salary, commission or other type of compensation in the service of an employer.
- (7) "Employer" means an individual, partnership, association, corporation, governmental body, unit or agency, or any other entity, whether or not organized for profit, having a place of business or doing business within the Municipality and who or that employs one or more persons on a salary, wage, commission or other compensation basis.
- (8) "Fiscal year" means an accounting period of twelve months or less ending on any day other than December 31.
- (9) "Generic Form" means an electronic or paper form designed for reporting estimated municipal income taxes and/or annual municipal income tax liability, that contain all the information required on Germantown's regular tax return and estimated payment forms, and are in a similar format that will allow processing of the generic forms without altering Germantown's procedures for processing forms.
- (10) "Gross receipts" means the revenue derived from sales, work done, or services rendered before any deductions, exceptions, or credits are claimed.
- (11) "Income" shall include all monies derived from any source whatsoever, including but not limited to:
 - (a) All salaries, wages, commissions, other compensation and other income from whatever source received by residents of Germantown.
 - (b) All salaries, wages, commissions, other compensation and other income from whatever source received by nonresidents for work done or services performed or rendered or other activities conducted in Germantown.
 - (c) The portion attributable to the Municipality of Germantown of the net profits of all unincorporated businesses, associations, professions, corporations, or other entities from sales made, work done, services performed or rendered, and business or other activities conducted in Germantown.

- (12)"Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085,26 U.S.C. 1, as amended.
- (13) "Net profits" means the net gain from the operation of a business, profession, enterprise or other activity, after provision for all ordinary and necessary expenses either paid or accrued in accordance with the accounting system used by the taxpayer for Federal income tax purposes without deduction of taxes imposed by this chapter, Federal or State or other taxes based on income; and in the case of an association without deduction of compensation to partners and other owners; and otherwise adjusted to the requirements of this chapter and the rules & regulations promulgated by the Superintendent of Taxation.
- Net profits shall include any amount or value received, realized, or recognized in a sale or other disposition of tangible personal property or real property used in business, in excess of book value.
- (14)"Nonresident" means any individual domiciled outside the Municipality of Germantown.
- (15)"Nonresident unincorporated business entity" means an unincorporated business entity not having a place of business within the City.
- (16)"Other payer" means any person that pays an individual any item included in the taxable income of the individual, other than the individual's employer or that employer's agent.
- (17)"Person" means every natural person, partnership, fiduciary, association or corporation. Whenever used in any section prescribing and imposing a penalty, the term "person" includes an officer or employee of a corporation, or a member, partner, or employee of an association.
- (18)"Place of business" means any bona fide office (other than a mere statutory office), factory, warehouse or other space which is occupied and used by the taxpayer in carrying on any business activity individually or through one or more of his regular employees regularly in attendance.
- (19)"Resident" means an individual domiciled in the Municipality of Germantown Ohio.
- (20)"Resident unincorporated business entity" means an unincorporated business entity having a place of business within the Municipality.
- (21)"Return Preparer" means any person other than a taxpayer that is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.
- (22)"Schedule C" means the Internal Revenue Service Schedule C filed by a taxpayer pursuant to the Internal Revenue Code as amended.
- (23)"Superintendent of Taxation" (also referred to as Superintendent) means the Superintendent of Taxation of the City, or the person executing the duties of the aforesaid Superintendent of Taxation.

- (24)"Taxable income" means income minus the deductions and credits allowed by this Chapter.
- (25)"Taxable year" means the calendar year, or the fiscal year upon the basis of which the net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required to be made.
- (26)"Taxpayer" means a person, whether an individual, partnership, association, or any corporation or other entity, required hereunder to file a return or pay a tax.

181.03 IMPOSITION OF TAX

(a) Subject to the provisions of Section 181.15, an annual tax for the purposes specified in Section 181.01 shall be imposed beginning January 1, 1988, at the rate of one and one-quarter percent (1.25%) per annum upon the following:

- (1) On all income, salaries, wages, commissions and other compensation received during the effective period of this chapter by residents of Germantown, and on all income, salaries, wages, commissions, and other compensation received during the effective period of this Chapter by nonresidents for work done or services performed or rendered in the Municipality of Germantown.
- (2)
 - A. On the portion attributable to Germantown of the net profits earned and accrued or received during the effective period of this chapter of all resident associations, unincorporated businesses, professions or other entities, derived from sales made, work done, services performed or rendered and business or other activities conducted in Germantown.
 - B. On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner or owner of a resident unincorporated business entity not attributable to Germantown upon which the tax was not paid by the entity.
 - C. On the portion attributable to Germantown of the net profits earned and accrued or received during the effective period of this chapter of all nonresident associations, unincorporated businesses, professions or other entities, derived from sales made, work done or services performed or rendered and business or other activities conducted in Germantown, whether or not such association or other unincorporated business entity has a or place of business in Germantown.
 - D. On the portion of the distributive share of the net profits earned and accrued or received during the effective period of this chapter of a resident partner or owner of a nonresident association or other unincorporated business entity not attributable to Germantown on which the tax was not paid by the entity.

- (3) On the portion attributable to Germantown of the net profits earned and accrued or received during the effective period of this chapter of all corporations derived from sales made, work done, services performed or rendered and business or other activities conducted in Germantown.

(b) The portion of the entire net profits of a taxpayer to be allocated as having been derived from within Germantown, in the absence of actual records thereof, shall be determined as follows:

- (1) Multiply the entire net profits by a business allocation percentage to be the average ratio of:
 - A. The average net book value of the real and tangible personal property owned or used by the taxpayer in the business or profession in Germantown during the taxable period to the average net book value of all the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.
As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.
 - B. Wages, salaries and other compensation paid or accrued during the taxable period to persons employed in the business or profession for services performed in Germantown to wages, salaries and other compensation paid or accrued during the same period to persons employed in the business or profession, wherever their services are performed;
 - C. All sales of tangible personal property which is shipped from a place within Germantown to purchasers outside Germantown regardless of where title passes if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

(c) For the purpose of this section, the taxable base shall be determined in accordance with Federal tax interpretations, when applicable, and with the accounting method used by the taxpayer for Federal income taxes adjusted to the requirements of this chapter. With respect to loss carryforward and business losses against personal income, the following shall apply:

- (1) Net operating losses may be carried forward for three (3) years. No portion of a net operating loss shall be carried back against net profits of a prior year. Losses shall not be allowed (in whole or in part) to be allocated to the municipality as loss carry forward if the loss occurred during a time period in which gross receipts (in whole or in part) were not allocated and reported to the Municipality.

- (2) In determining income subject to taxation, losses from the operation of a business or profession cannot be used to reduce wages from employment or other employment compensation.
- (d) Consolidated Returns.
- (1) Any affiliated group which files a consolidated return for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code may file a consolidated return with the Municipality of Germantown. However, once the affiliated group has elected to file a consolidated return or a separate return with the Municipality, the affiliated group may not change their method of filing in any subsequent tax year without written approval from the Municipality of Germantown.
 - (2) Allocation of income and deductions between related taxpayer; in the case of a corporation that carries on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates, or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within Germantown constituting a portion only of its total business, the Superintendent may require such additional information as he may deem necessary to ascertain whether net profits are properly allocated to Germantown. If the Superintendent finds net profits are not properly allocated to Germantown by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with such division, branch, factory, office, laboratory or activity or by some other method, he shall make such allocation as he deems appropriate to produce a fair and proper allocation of net profits to Germantown.
- (e) Exceptions. The tax provided for herein shall not be levied upon:
- (1) Pay or allowances of active members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard.
 - (2) The income of religious, fraternal, charitable, scientific, literary or educational institutions to the extent that such income is derived from tax exempt real estate, tax exempt tangible or intangible property or tax exempt activities.
 - (3) Poor relief, unemployment insurance benefits, old age pensions or similar payments including disability benefits received from local, State or Federal governments or charitable, religious or educational organizations.
 - (4) Proceeds of insurance paid by reason of the death of the insured; pensions, disability benefits, annuities or gratuities not in the nature of compensation for services rendered from whatever source derived.
 - (5) Receipts from seasonal or casual entertainment, amusements, sports events and health and welfare activities when any such are conducted by bona fide charitable, religious or educational organizations and associations.
 - (6) Personal earnings of all persons under eighteen years of age.

- (7) Gains from involuntary conversion, cancellation of indebtedness, interest on Federal obligations, items of income already taxed by the State of Ohio from which Germantown is specifically prohibited from taxing, and income of a decedent's estate during the period of administration (except such income from the operation of a business).
- (8) Expenses deductible on federal form 2106, subject to audit and approval by the superintendent.
- (9) Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official, to the extent that such compensation does not exceed one thousand dollars annually.
- (10) Parsonage allowance, to the extent of the rental allowance or rental value of a house provided as a part of an ordained minister's compensation.
- (11) Alimony paid.
- (12) Income, salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the United States Constitution or any act of Congress limiting the power of the States or their political subdivisions to impose net income taxes on income derived from interstate commerce.
- (13) Income, salaries, wages, commissions and other compensation and net profits, the taxation of which is prohibited by the Constitution of the State of Ohio or any act of the Ohio General Assembly limiting the power of the Municipality to impose net income taxes.

181.04 EFFECTIVE DATE

Such tax shall be levied, collected and paid with respect to the income, salaries, wages, commissions and other compensation earned and shall be levied with respect to the net profits of the businesses, professions or other activities earned and accrued or received from and after April 1, 1976.

181.05 RETURN AND PAYMENT OF TAX

(a) Each person 18 years of age or older who engages in business or other activity or whose income, salary, wage, commission or other compensation is subject to the tax imposed by this chapter, shall, whether or not a tax be due thereon, make and file a return on or before April 30 of the year following the effective date of this chapter, and on or before April 30 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed within four months from the end of such fiscal year or period. The Superintendent is hereby authorized to provide by regulation that the return of an employer or employers, showing the amount of tax deducted by such employer or employers from the salaries, wages, commissions or other compensation of an employee, and paid by him or them to the Superintendent may be accepted as the return required of any employee whose sole income, subject to tax under this chapter, is such income, salaries, wages, commissions or other compensation.

(b) The return shall be filed with the Superintendent on a form or forms furnished or obtainable upon request from the Superintendent or on other forms deemed acceptable by the Superintendent setting forth:

- (1) The aggregate amounts of income, salaries, wages, commissions and other compensation received by him and gross receipts from business, the profession or other activity, less allowable expenses incurred in the acquisition of such gross receipts earned during the preceding year and subject to such tax;
- (2) The amount of the tax imposed by this chapter on such earnings and profits; and
- (3) Such other pertinent statements, information returns or other information as the Superintendent may require.

(c) The Germantown Income Tax Department shall accept a generic form of any return, report or document required to be filed if the generic form once completed and filed contains all of the information required to be submitted with the Municipality of Germantown's prescribed returns, reports or documents, and if the taxpayer or return preparer filing the generic form otherwise complies with the rules or ordinances of the Municipality of Germantown governing the filing of returns, reports or documents.

(d) Acceptance of Federal Extensions.

- (1.) Any taxpayer that has requested an extension for filing a Federal income tax return may request an extension for the filing of a Germantown tax return. The taxpayer shall make the request by filing a copy of the taxpayer's request for Federal filing extension with the Superintendent of Taxation.
- (2.) Any taxpayer not required to file a Federal income tax return may request an extension for filing a Germantown tax return in writing.
- (3.) The request for an extension shall be filed not later than the last day for filing the Germantown tax return as prescribed by ordinance or rule of this municipal corporation.
- (4.) A valid extension request extends the due date for filing a return six (6) months from the original due date of such return.
- (5.) The Superintendent may deny a taxpayer's request for extension if the taxpayer:
 - A. Fails to timely file the request;
 - B. Fails to file a copy of the federal extension (if applicable);
 - C. Owes the Municipality of Germantown any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of income tax;
 - D. Has failed to file any required income tax return, report or other related document for a prior tax period.
- (6.) The granting of an extension for filing a Germantown income tax return does not extend the last date for payment of the tax; hence, penalty and interest may apply to any unpaid tax during the period of extension at the rate set out

by Section 181.10. No penalty shall be assessed in those cases in which the return is filed and the final tax paid within the extension period provided all other filing and payment requirements of the tax code have been met. Any extension by the Superintendent shall be granted with the understanding that declaration filing and payment requirements have been fulfilled; however, if, upon further examination it then becomes evident that declaration filing and payment requirements have not been fulfilled, penalty and interest may be assessed in full and in the same manner as though no extension had been granted.

- (e) (1) The taxpayer making a return shall, at the time of the filing thereof, pay to the Superintendent the amount of taxes shown as due thereon; provided, however, that credit shall be allowed for:
 - A. Any portion of the tax so due which shall have been deducted at the source pursuant to the provisions of Section 181.06 of this chapter;
 - B. Any portion of such tax which shall have been paid by the taxpayer pursuant to the provisions of Section 181.07; and
 - C. Credit to the extent allowed by Section 181.15 for tax paid to another municipality.
- (2) Subject to the limitations contained in Section 181.11, any taxpayer who has overpaid the amount of tax to which Germantown is entitled under the provisions of this chapter, may have such overpayment applied against any subsequent liability hereunder or, at his election indicated on the return, such overpayment (or part thereof) shall be refunded.

(f) Amended Returns

- (1) Where necessary, an amended return must be filed in order to report additional income and pay any additional tax due, or claim a refund of tax overpaid, subject to the requirements and/or limitations contained in Section 181.11. Such amended returns shall be on a form obtainable upon request from the Superintendent. A taxpayer may not change the method of accounting or apportionment of net profits after the due date for filing the original return without the approval of the Superintendent.
- (2) Within three months from the final determination of any Federal tax liability affecting the taxpayer's Germantown tax liability, such taxpayer shall make and file an amended Germantown return showing income subject to the Germantown tax based upon such final determination of Federal tax liability and pay any additional tax shown due thereon or make claim for refund of any overpayment.

(g) Information returns, schedules and statements required to support tax returns which are incomplete without such information shall be filed within the time limits set forth for the filing of the tax returns and the failure to file such information returns, schedules and statements shall be deemed to be a violation of this chapter. Provided, however, that the taxpayer shall have ten days after notification by the

Superintendent, or his authorized representative, to file the items required by this subsection.

(h) Any business, profession, association or corporation reporting a net loss is subject to the filing requirements of this ordinance.

181.06 COLLECTION AT SOURCE

(a) (1) Each employer shall at the time of the payment of any salary, wage, commission or other compensation, deduct the tax of one and one quarter percent (1.25%) beginning November 3, 1987, of the gross salaries, wages, commissions or other compensation due by the employer to his employees who are subject to the provisions of this chapter. In making such deduction at the time of payment, the employer shall compute the tax to the nearest full cent to that mills of five or more shall be increased to the next full cent and mills less than five shall be dropped. No person shall be entitled to a refund merely because such rounding off of the tax results in an apparent overpayment based on his total earnings. Each employer shall, on or before the fifteenth day of each month, make a return and pay to the Superintendent, the tax withheld during the preceding month. Provided, however, the Superintendent shall have the authority to approve the filing of returns and payment of the tax withheld on a quarterly basis. In such case, the employer shall, on or before the fifteenth day of each month following the calendar quarters ending March 31, June 30, September 30 and December 31, make a return and pay to the Superintendent the tax withheld during the preceding calendar quarter. Such approval for quarterly filings and payments may be withdrawn by the Superintendent when it is to the best interests of the Municipality to do so. The Superintendent shall provide by regulations, the manner in which such approval is to be granted or withdrawn.

(2) The employer shall be liable for the payment of the tax required to be deducted and withheld whether or not such tax has in fact been withheld.

(b) Such employer in collecting such tax, shall be deemed to hold the same, until payment is made by such employer to Germantown, as a trustee for the benefit of Germantown and any such tax collected by such employer from his employees shall, until the same is paid to Germantown, be deemed a trust fund in the hands of such employer.

(c) No person shall be required to withhold the tax on the wages or other compensation paid domestic servants employed by him exclusively in or about such person's residence, even though such residence is in Germantown, but such employee shall be subject to all of the requirements of this chapter.

(d) On or before January 31 of each year beginning with the year 1972, each employer shall file a withholding return on a form prescribed by and obtainable upon request from the Superintendent, setting forth the names and addresses of all

employees from whose compensation the tax was withheld during the preceding calendar year and the amount of tax withheld from his employees and such other information as may be required by the rules and regulations adopted by the Superintendent.

(e) All employers that provide any contractual service within the Municipality and who employ subcontractors in conjunction with that service, shall provide the Municipality the names and addresses of the subcontractors. The subcontractors shall be responsible for all income tax withholding requirements under this chapter.

181.07 DECLARATIONS

(a) Every person who anticipates the receipt of any taxable income which is not subject to Section 181.06, or who engages in any business, profession, enterprise or activity subject to the tax imposed by Section 181.03, shall file a declaration setting forth such person's estimated taxable income together with any estimated tax due thereon, if any; provided, however, if a person's income is wholly from wages from which the tax will be withheld and remitted to Germantown in accordance with Section 181.06, such person need not file a declaration.

(b) (1) Such declaration shall be filed on or before April 30 of each year during the life of this chapter, except that no penalties or interest shall be assessed, for not filing a declaration, on any resident taxpayer who was not domiciled in the Municipality on the first day of January of the year in which they became subject to estimated payments, nor shall penalties or interest be assessed on estimated payments if the taxpayer has remitted an amount equal to one hundred percent of the previous year's tax liability, provided that the previous year reflected a twelve-month period.

(2) Those taxpayers reporting on a fiscal year basis shall file a declaration within four months after the beginning of each fiscal year or period.

(c) (1) Such declaration shall be filed upon a form furnished by or obtainable upon request from the Superintendent. Credit shall be taken for the Germantown tax to be withheld from any portion of such income to determine the estimated tax due. In accordance with the provisions of Section 181.15, credit may be taken for tax to be paid to or to be withheld and remitted to another taxing municipality.

(2) The original declaration, or any subsequent amendment thereof, may be amended at any time.

(3) An amended declaration must be filed on or before January 31 of the following year, or in the case of a taxpayer on a fiscal year, on or before the date fixed by regulation of the Superintendent if it appears that the original declaration made for such taxable year underestimated the taxpayer's income by thirty percent (30%) or more. At such time a payment which, together with prior payments, is sufficient to pay the taxpayer's entire estimated liability shall be made. If upon the filing the

return required by Section 181.05, it appears that the taxpayer did not pay ninety percent (90%) of his tax liability, as shown on such return, on or before January 31, or the date fixed by regulations, whichever is applicable, the difference between ninety percent (90%) of such taxpayer's tax liability and the amount of estimated tax actually paid on or before January 31, or the date fixed by regulation, whichever is applicable, shall be subject to the interest and penalty provisions of Section 181.10. An exception will be made if one hundred percent (100%) of the prior year tax liability has been paid in equal quarterly installments in the current year.

- (d) (1) Such declaration of net estimated tax to be paid Germantown by taxpayers who are individuals shall be accompanied by a payment of at least one-fourth (1/4) of ninety percent (90%) of the estimated annual tax, less credit, and at least a similar amount shall be paid on or before the last day of the seventh, tenth and thirteenth months after the beginning of the taxable year. Provided, however, that in case and amended declaration has been filed, the unpaid balance shown due thereon shall be paid in equal installments on or before the remaining payment dates.
 - (2) Such declaration of estimated tax to be paid Germantown by corporations and associations shall be accompanied by a payment of at least one fourth of 90% of the estimated annual tax and at least a similar amount shall be paid on or before June 15, September 15 and December 15. In the case of a fiscal year taxpayer the second, third, and fourth quarterly payments shall be due on the fifteenth day of the sixth, ninth, and twelfth months of the taxable year, respectively.
 - (3) Provided further, however, that the last quarterly payment of estimated tax need not be made if the taxpayer files his final return and pays the balance of the tax due thereon within forty-five days following the end of his taxable year.
- (e) On or before the last day of the fourth month of the calendar or fiscal year following that for which such declaration or amended declaration was filed, an annual return shall be filed and any balance which may be due Germantown shall be paid therewith in accordance with the provisions of Section 181.05

181.08 DUTIES AND POWERS OF THE SUPERINTENDENT OF TAXATION

- (a) (1) It shall be the duty of the Superintendent to receive the tax imposed by this chapter in the manner prescribed herein from the taxpayers; to keep an accurate record thereof; and to report daily all moneys as received.
- (2) It shall be the duty of the Superintendent to enforce payment of all taxes owing Germantown, to keep accurate records for a minimum of six years showing the amount due from each taxpayer required to file a declaration and/or make any return, including taxes withheld, and to show the dates and amounts of payments thereof.

(b) The Superintendent is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of Council by motion, to adopt and promulgate and to enforce rules and regulations relating to any matter or thing pertaining to the collection of taxes and administration and enforcement of the provisions of this chapter, including provisions for the reexamination and correction of returns.

(c) In any case where a taxpayer or employer has failed to file a return or has filed a return which does not show the proper amount of tax due, the Superintendent may assess the amount of tax appearing to be due, together with interest and penalties thereon, if any, in the following manner:

(1) General provisions.

- A. If the Superintendent determines that any taxpayer subject to the provisions of this chapter has a tax liability for which he has filed no return or has filed an incorrect return and has failed to pay the full amount of tax due, the Superintendent shall issue a proposed assessment showing the amount of tax due, together with any penalty and interest that may have accrued thereon.
 - 1. Such proposed assessment shall be served upon the taxpayer in person or by mailing to his last known address. Proof of mailing furnished by the U.S. Post Office shall be presumptive proof of receipt thereof by the addressee.
 - 2. A taxpayer may, within fifteen days after the date the proposed assessment was served or mailed, file a written protest with the Superintendent. Within fifteen days after receipt of the protest, the Superintendent shall give the protestant an opportunity to be heard; provided further that the Superintendent may extend the date of hearing for good cause shown. After the hearing the Superintendent shall withdraw the assessment or he shall adjust or reaffirm the assessment and it shall then become final. If no protest is filed as herein provided, such proposed assessment shall become final fifteen days after being served.
- B. After a proposed assessment becomes final, notice of such final assessment shall be issued and shall be served in the same manner as a proposed assessment.
 - 1. A taxpayer shall have thirty days after the date the final assessment was served or mailed within which to file written notice of appeal with the Board of Tax Appeals. Such written notice of appeal shall be filed in a sealed envelope plainly marked "Appeal to Board of Tax Appeals" and mailed or delivered to the Superintendent who shall deliver such appeal to the Chairman of the Board of Tax Appeals, or, if the Chairman is not available, to the Vice-Chairman.

2. The Board of Tax Appeals, upon receipt of a notice of appeal, shall within fifteen days notify the Superintendent thereof who shall forward within fifteen days to the Board a certified transcript of all actions taken by him with respect to such final assessment. Such transcript shall be open to inspection by the appellant and his counsel. The board of appeals shall schedule a hearing on the appeal within 45 days from the date of the appeal. (see section 181.13.)
 3. Any taxpayer against whom a final assessment has been issued and who has filed a notice of appeal shall be granted a hearing by the Board of Tax Appeals. At such hearing the appellant and the Superintendent shall be given opportunity to present evidence relating to the final assessment. After the conclusion of such hearing, the Board of Tax Appeals shall affirm, reverse or modify the final assessment and shall furnish a copy of its decision in respect thereof to the appellant and the Superintendent. The appellant's copy of such decision shall be served upon him in the same manner as herein provided for services of assessments.
- C. When any taxpayer subject to the provisions of this chapter has filed a return indicating the amount of tax due and has failed to pay such tax to the Superintendent as required by this chapter, the Superintendent need not issue an assessment but may proceed under the provisions of Sections 181.11 and 181.12.
- (2) Provisions affecting employers.
- A. If the Superintendent determines that an employer subject to the provisions of this chapter has failed to file a return for tax withheld and has failed to pay to the Superintendent the full amount of such taxes, the Superintendent shall issue a proposed assessment showing the amount of tax due, together with any penalties and interest that may have accrued thereon, and the provision of subsections (c)(1)A. and B. hereof shall apply.
 - B. If the Superintendent determines that an employer subject to the provisions of this chapter has failed to withhold tax, the Superintendent shall issue a proposed assessment showing the tax due, together with any penalties and interest that may have accrued thereon, and the provisions of subsections (c)(1)A. and B. hereof shall apply.
 - C. When an employer subject to the provisions of this chapter has filed a return indicating the amount of tax withheld and has failed to pay such tax to the Superintendent as required by this chapter, the Superintendent may proceed under the provisions of Section 181.11 and 181.12 and need not issue an assessment as provided in subsections (c)(2)A. and B. hereof.

(d) Any taxpayer or employer who does not file a notice of appeal to the Board of Tax Appeals from a final assessment issued against him shall pay the amount thereof within thirty days after service of such final assessment.

(e) The Superintendent shall have the authority, when requested by the taxpayer and for good cause shown, to extend the time of making and filing any return whenever he deems it necessary so to do, but not to exceed a period of six months, or one month beyond any extension requested of or granted by the Internal Revenue Service for the filing of the Federal income tax return.

(f) When an application for deferred payment of tax due is filed by a taxpayer, the Superintendent may authorize partial payments of unpaid taxes when, in his judgment, the taxpayer is unable, due to hardship conditions, to pay the full amount of the tax when due, and when, in his judgment, such deferred payments are the best means of accomplishing the intent of this chapter. Provided, however, that the Superintendent shall not authorize an extension of time for the payment of such taxes due for more than six months beyond the date of the filing of the application.

**181.09 INVESTIGATIVE POWERS OF THE SUPERINTENDENT;
PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION**

(a) The Superintendent, or any authorized employee, is hereby authorized to examine the books, papers, records and copies of Federal income tax returns of any employer or of any taxpayer or person subject to, or whom the Superintendent believes is subject to the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or if no return was made, to ascertain the tax due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer, is hereby directed and required to furnish within ten days following a written request by the Superintendent, or his duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations as are hereby authorized.

(b) The Superintendent is hereby authorized to order any person presumed to have knowledge of the facts to appear before him and may examine such person, under oath, concerning any income which was or should have been returned for taxation or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and copies of Federal income tax returns and the attendance of all personal before him, whether as parties or witnesses, whenever he believes such persons have knowledge of such income or information pertinent to such inquiry.

(c) The refusal to produce books, papers, records and copies of Federal income tax returns, or the refusal to submit to such examination by any employer or person subject or presumed to be subject to the tax or by any officer, agent or employee of a person subject to the tax or required to withhold tax or the failure of any person to comply with the provisions of the section or with an order or subpoena of the

Superintendent authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 181.12.

(d) Any information gained as the result of any returns, investigations, hearings or verifications required or authorized by this chapter shall be confidential, except for official purposes, or except when ordered by a court of competent jurisdiction. Any person divulging such information in violation of this chapter, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be subject to a fine or penalty of not more than five hundred dollars (\$500.00) or imprisoned for not more than six months, or both. Each disclosure shall constitute a separate offense.

In addition to the penalty, any employee of the Municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(e) Every taxpayer shall retain all records necessary to compute his tax liability for a period of six years from the date his return is filed, or the withholding taxes are paid.

181.10 INTEREST AND PENALTIES

(a) All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid ten days after they become due shall bear interest at the rate at which interest is paid on refunds according to Ohio R.C. 5702.47, and updated annually.

(b) In addition to interest as provided in subsection (a) hereof, penalties are hereby imposed as follows based on the tax remaining unpaid ten days after they become due:

- (1) For failure to pay taxes due, other than taxes withheld; one and one half percent (1 ½%) per month or fraction thereof.
- (2) For failure to remit taxes withheld from employees: three percent (3%) per month or fraction thereof, or ten percent (10%), whichever is greater.
- (3) Where the taxpayer has failed to file a declaration on which he has estimated and paid a tax equal to or greater than the tax paid for the previous year, or has failed to file a declaration on which he was estimated and paid tax equal to or greater than ninety percent (90%) of the actual tax for the year, or has failed to file a final return and pay the total tax on or before the end of the month following the end of his taxable year; ten percent (10%) of the difference between ninety percent (90%) of the actual tax for the year and the amount paid through withholding or declaration.
- (4) Except in the case of fraud, the penalty shall not exceed fifty percent (50%) of the unpaid tax.

(5) Twenty-five dollars (\$25.00) shall be assessed as an administrative charge for those taxpayers failing to timely file the annual return or failing to pay the taxes due.

(c) Exceptions. A penalty shall not be assessed on an additional tax assessment made by the Superintendent when a return has been filed in good faith and the tax paid thereon within the time prescribed by the Superintendent and provided further, that, in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a Federal audit, providing an amended return is filed and the additional tax is paid within three months after final determination of the Federal tax liability.

(d) Upon recommendation of the Superintendent, the Board of Tax Appeals may abate penalty or interest, or both.

(e) Provided, however, that in no case shall penalty and interest charges be levied when the total of such penalty and interest amounts to less than one dollar (\$1.00).

(f) Any person required to withhold the tax who knowingly fails to withhold such tax, or pay over such tax or knowingly attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not withheld, or not paid over. No other penalty under this section shall be applied to any offense to which this penalty is applied.

(g) Interest but no penalty will be assessed where an extension has been granted by the Superintendent and the final tax paid within the period was extended

181.11 COLLECTION OF UNPAID TAXES AND REFUND OF OVERPAYMENTS

(a) In addition to any criminal penalties which may be imposed pursuant to Section 181.12, all taxes imposed by Section 181.03 shall be collectible, together with any interest and penalties thereon, by civil suit. Except in the case of fraud, omission of twenty-five percent (25%) or more of income subject to this tax, or failure to file a return, an additional assessment shall not be made after three years from the time the return was due or filed, whichever is later. In the case of fraud, omission of 25% or more of income subject to this tax, or failure to file a return, all additional assessments shall be made and all civil actions to recover Municipal income taxes and penalties and interest thereon shall be brought within six (6) years after the tax was due or the return was filed, whichever is later. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the Federal statute of limitation, the period within which an additional assessment may be made by the Superintendent shall be one year from the time of the final determination of the Federal tax liability.

(b) Those officers or employees having control or supervision of, or charged with, the responsibility of filing the return and making payments for a corporation or association shall be personally liable for failure to file the return or pay the taxes and penalties and interest due as required. The dissolution, bankruptcy, or reorganization of any employer does not discharge the officers' or employees' liability for a prior failure of such business to file a return or pay the taxes due.

(c) Taxes erroneously paid shall not be refunded unless a claim for refund is made within three years from the date which such payment was made or the return was due, or within three months after final determination of the Federal tax liability, whichever is later.

(d) Additional amounts of less than one dollar (\$1.00) shall not be refunded or assessed unless such assessment results from income which the taxpayer has failed to report.

181.12 VIOLATIONS

(a) No person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) Make any incomplete, false or fraudulent return;
- (3) Knowingly fail or refuse to pay the tax, penalties or interest imposed by this chapter.
- (4) Knowingly fail or refuse to withhold the tax from his employees and remit such withholding to the Superintendent;
- (5) Refuse to permit the Superintendent or any duly authorized agent or employee to examine his or his employer's books, records, papers and copies of Federal income tax returns relating to the income or net profits of a taxpayer;
- (6) Fail to appear before the Superintendent and to produce his or his employers' books, records, papers or copies of Federal income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Superintendent;
- (7) Refuse to disclose to the Superintendent any information with respect to the income or net profits of a taxpayer;
- (8) Fail to comply with the provisions of this chapter or any order or subpoena of the Superintendent;
- (9) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

(b)(1) Any person subject to the provisions of Section 181.01 through 181.17 inclusive, who has failed to file or has filed an incorrect return or has failed to pay the full amount of tax due, shall not be deemed to have committed an offense punishable under the provisions of this section until the assessment issued against him under the provisions of Section 181.08 has become due and payable.

(2) Any person who has filed a return under the provisions of Sections 181.01 through 181.17 inclusive, indicating the amount of tax due, and has failed to pay such tax, together with any penalties or interest that may have accrued thereon, shall not be deemed to have committed an offense for having knowingly failed to pay the tax, penalties or interest due as provided in subsection (a)(3) hereof, until the date of the filing of such return.

(c) The term "person" as used in this section shall, in addition to the meaning prescribed in Section 181.02, include in the case of an association or corporation not having any partner, member or officer within Germantown, any employee or agent of such association or corporation who can be found within the corporate limits of Germantown.

(d) All prosecutions under this section must be commenced within the time limit as now or hereafter may be provided by the applicable sections of the Ohio Revised Code for the prosecution of violations of Municipal income tax ordinances.

(e) The failure of any employer or taxpayer or person to receive or procure a return, declaration or other required form shall not excuse him from making any information return, return or declaration, from filing such forms, or from paying the tax.

181.13 BOARD OF TAX APPEALS

(a) A Board of Tax Appeals, consisting of a chairman and two other individuals, each to be appointed by Council, and to serve staggered terms of three years, is hereby created. A majority of the members of the Board shall constitute a quorum. The Board shall adopt its own procedural rules and shall keep a record of its transactions. Any hearing by the Board shall be conducted privately and the provisions of Section 181.09 with reference to the confidential character of information required to be disclosed by this chapter shall apply to such matters as may be heard before the Board on appeal. Such records are not public records available for the inspection under Section 149.43 of the Ohio Revised Code. Hearings requested by the taxpayer before a Board of Tax Appeals created pursuant to the section are not meetings of a public body subject to Section 121.22 of the Ohio Revised Code.

(1) Whenever the Tax Superintendent issues a final decision regarding an income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the Municipality of Germantown, the Tax Superintendent shall notify the taxpayer at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

(2) Any person who is aggrieved by a decision of the Tax Superintendent and who has filed with the Municipality of Germantown the required returns or other documents pertaining to the municipal income tax obligation at issue in the decision may appeal the decision to the Board

of Tax Appeals by filing a request with the Board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the Tax Superintendent has issued the decision.

- (3) The imposition of penalty and interest as prescribed in the Codified Ordinances of the Municipality of Germantown is not a sole basis for appeal.
- (4) The Board of Tax Appeals shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing.
- (5) If the taxpayer does not waive the hearing, the taxpayer may appear before the Board and may be represented by an attorney at law, certified public accountant or other representative.

(b) The Board shall hear and pass on appeals from any ruling or decision of the Superintendent, and, at the request of the taxpayer or Superintendent, is empowered to substitute alternate methods of allocation.

- (1) The Board may affirm, reverse or modify the Tax Superintendent's decision or any part of that decision.
- (2) The Board shall issue a decision on the appeal within ninety (90) days after the Board's final hearing on the appeal, and send notice of its decision by ordinary mail to the petitioner within fifteen (15) days after issuing the decision.

(c) As provided in Section 181.08, any person dissatisfied with any ruling or decision of the Superintendent which is made under the authority conferred by this chapter may appear therefrom to the Board of Tax Appeals and the Board shall, on hearing, have jurisdiction to affirm, reverse or modify any such ruling or decision, or any part thereof. A taxpayer dissatisfied with a decision or filing by the board of appeals may appeal to a court of competent jurisdiction within thirty days from the date of filing of the ruling or decision to which exception is taken.

181.14 ALLOCATION OF FUNDS

The funds collected under the provisions of this chapter shall be placed in the General Fund of the Municipality to be used for the purpose of paying all costs of collecting the taxes levied by this chapter and the cost of administering and enforcing the provisions hereof; for the payment of other current operating expenses of the Municipality; and for payment of the costs of making such permanent improvements as Council may determine from time to time.

181.15 CREDIT FOR TAX PAID TO ANOTHER MUNICIPALITY

(a) Every individual taxpayer who resides in Germantown who receives net profits, income, salaries, wages, commissions or other personal service compensation for work done or services performed or rendered outside Germantown, if it be made to appear that he has paid a Municipal income tax on the same income taxable under this chapter to another municipality, shall be allowed a credit against the tax

imposed by this chapter. Such credit shall be equal to seventy-five percent (75%) of the amount obtained by multiplying the lower of the tax rate of such other municipality or of the Municipality of Germantown by the income of the individual which is taxable by such other municipality. The credit shall not exceed the tax assessed by this chapter on such income earned in such other municipality or municipalities where such tax is paid.

(b) A claim for refund or credit under this section shall be made in such manner as the Superintendent may by regulation provide.

181.16 SAVINGS CLAUSE

This chapter shall not apply to any person, firm, corporation or income as to whom, or as to which it is beyond the power of Council to impose the tax herein provided for. If any sentence, clause, section or part of this chapter, or any tax against any individual or any of the several groups specified herein, is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the remaining provisions, sentences, clauses, sections or other parts of this chapter. It is hereby declared to be the intention of Council that this chapter would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

181.17 COLLECTION OF TAX AFTER TERMINATION OF CHAPTER

(a) This chapter shall continue effective insofar as the levy of taxes is concerned until amended or repealed, and insofar as the collection of taxes levied hereunder and actions or proceedings for collecting any tax so levied or enforcing any provisions of this chapter are concerned, it shall continue effective until all of such taxes levied in the aforesaid period are fully paid and any and all suits and prosecutions for the collection of such taxes or for the punishment of violations of this chapter shall have been fully terminated, subject to the limitations contained in Sections 181.11 and 181.12.

(b) Annual returns due for all or any part of the last effective year of this chapter shall be due on the date provided in Sections 181.05 and 181.06 as though the same were continuing.

181.99 PENALTY

Whoever violates any provision of Section 181.12 shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than six months or both for each offense.